

§ 347.213

(f) Procedures. Procedures for applications under this section are set out in section 303.187.

[70 FR 17560, Apr. 6, 2005; 70 FR 20704, April 21, 2005, as amended at 71 FR 20527, Apr. 21, 2006]

§ 347.213 Establishment or operation of noninsured foreign branch.

(a) A foreign bank may establish or operate a state branch, as provided by state law, without federal deposit insurance whenever:

(1) The branch only accepts initial deposits in an amount equal to the SMDIA or greater; or

(2) The branch meets the criteria set forth in §§ 347.214 or 347.215.

(b) [Reserved]

[70 FR 17560, Apr. 6, 2005, as amended at 74 FR 47718, Sept. 17, 2009]

§ 347.214 Branch established under section 5 of the International Banking Act.

A foreign bank may operate any state branch as a noninsured branch whenever the foreign bank has entered into an agreement with the FRB to accept at that branch only those deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and implementing rules and regulations administered by the FRB (12 CFR 211).

§ 347.215 Exemptions from deposit insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be considered to be engaged in domestic retail deposit activity that requires the foreign bank parent to establish an insured U.S. bank subsidiary if the State branch accepts initial deposits only in an amount of less than an amount equal to the SMDIA that are derived solely from the following:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who:

(i) Are not citizens of the United States;

(ii) Are residents of the United States; and

(iii) Are employed by a foreign bank, foreign business, foreign government,

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or recognized international organization;

(3) Persons (including immediate family members of natural persons) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other non-deposit banking services within the past twelve months or has entered into a written agreement to provide such services within the next twelve months;

(4) Foreign businesses, large United States businesses, and persons from whom an Edge or agreement corporation may accept deposits under 12 CFR 211.6(a)(1);

(5) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of any of the foregoing, and recognized international organizations;

(6) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds or the transmission of such funds by any electronic means; and

(7) Any other depositor, but only if:

(i) The branch's average deposits under this paragraph (a)(7) do not exceed one percent of the branch's average total deposits, as calculated under paragraph (a)(7)(ii) if this section (*de minimis* exception).

(ii) For purposes of calculating this exception:

(A) The branch's average deposits under this paragraph and the average total deposits must be computed by summing the close of business figures for each of the last 30 calendar days, ending with and including the last day of the calendar quarter, and dividing the resulting sum by 30;

(B) For days on which the branch is closed, balances from the last previous business day are to be used;

(C) The branch may exclude deposits in the branch of other offices, branches, agencies or wholly owned subsidiaries of the bank to determine its average deposits;

(D) The branch must not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public; and

(E) A foreign bank that has more than one state branch in the same state may aggregate deposits in such branches (excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank) for the purpose of this paragraph (a)(7).

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a State branch initial deposits of less than an amount equal to the SMDIA and such deposits are not otherwise exempted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

(2) Procedures for applications under this section are set out in § 303.186.

(c) *Transition period.* A noninsured state branch may maintain a retail deposit lawfully accepted prior to April 1, 1996 pursuant to regulations in effect prior to July 1, 1998:

(1) If the deposit qualifies pursuant to paragraph (a) or (b) of this section; or

(2) If the deposit does not qualify pursuant to paragraph (a) or (b) of this section, in the case of a time deposit, no later than the first maturity date of the time deposit after April 1, 1996.

[70 FR 17560, Apr. 6, 2005, as amended at 74 FR 47718, Sept. 17, 2009]

§ 347.216 Depositor notification.

Any state branch that is exempt from the insurance requirement pursuant to § 347.215 shall:

(a) Display conspicuously at each window or place where deposits are

usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement "This deposit is not insured by the FDIC"; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch. This provision applies to any negotiable certificates of deposit made in a branch on or after July 6, 1989, as well as to any renewals of such deposits which become effective on or after July 6, 1989.

Subpart C—International Lending

§ 347.301 Purpose, authority, and scope.

Under the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153) (12 U.S.C. 3901 *et seq.*) (ILSA), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to international lending activities of banks.

§ 347.302 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means an insured state nonmember bank.

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions' "Country Exposure Report" form (FFIEC No. 009).